

REMARKS

I. CLAIM REJECTIONS UNDER U.S.C. § 102

Claims 1, 14, 32-36, 40, and 54 stand rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,657,450 (Rao). Applicants respectfully note that in order to sustain a rejection under § 102, each of the claim elements must be disclosed, either expressly or inherently, in the cited reference.

Claims, 1, 14, 32-36, 40, and 54 each recites tracing the execution of the workload *to identify a potential data conflict*, wherein the workload is executed on a single node before the workload is sent to a plurality of nodes for execution (Emphasis Added). Rao does not disclose or suggest such limitation. Rather the cited passages (column 2, lines 4-13, 28-35, and 45-50) disclose:

The client workspace and the intermediary server communicate using a generic protocol. The intermediary server in turn communicates with the various information servers using a protocol supported by the information source. The intermediary server synthesizes or otherwise obtains time and progress estimates responsive to such user requests. For operations involving multiple information sources, *time estimates are obtained for each information source and then synthesized to obtain time estimates for the operation.*

During the course of interaction with information sources that do not provide time estimates, the intermediary server builds up a timing model for each information source of how long various operations take to execute. The model will take into account a variety of factors including network distance and the hour of day. The models are used *to create completion time or first response estimates for performing various operations* with the information sources.

... generate completion time estimates for each sub-operation to each such information source based on their model; for information sources that do provide estimates, issue a set-up operation to obtain an estimate, factor in merge processing costs with selected time estimate to create time estimate. . .

(Emphasis Added)

As such, the cited passages disclose determining an estimate of completion time for performing operations, and do not disclose or suggest tracing the execution of workload *to identify a potential data conflict*. In fact, there is nothing in Rao that discloses or suggests potential data conflict, much less, identifying a potential data conflict by tracing an execution of workload. For at least the foregoing reasons, claims 1, 14, 32-36, 40, and 54, and their respective dependent claims, are believed allowable over Rao.

II. CLAIM REJECTIONS UNDER U.S.C. § 103

Claims 1-9, 11, 14-58, 60-63, 65, and 66 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,405,257 (Gersht) in view of Rao.

As discussed, Rao does not disclose or suggest identifying a potential data conflict by tracing an execution of the workload on a single node before the workload is sent to a plurality of nodes for execution. Applicants respectfully note that Gersht fails to make up the deficiency present in Rao. In particular, the cited passage (column 2, lines 15-20) of Gersht discloses:

Specifically, each source node detects the beginning of a burst in the traffic that is accessing that source node. From the predetermined set of routes between the source-destination node pair and based on the peak packet rate, service class, and quality of service (Qos) requirements of the detected burst, the source node identifies a predetermined route for the burst.

As such, the cited passage of Gersht does not disclose or suggest *identifying a potential data conflict* by tracing the execution of the workload that is executed at the single node before the workload is sent to a plurality of nodes for execution. Since both Rao and Gersht fail to disclose the above limitation, they cannot be combined to form the resulting subject matter. For at least the foregoing reason, claims 1-9, 11, 14-58, 60-63, 65, and 66, are allowable over Gersht, Rao, and their combination.


CONCLUSION

Based on the foregoing, all claims are believed in condition for allowance. If the Examiner has any questions or comments regarding this amendment, please contact the undersigned at the number listed below.

The Commissioner is authorized to charge any fees due in connection with the filing of this document to Bingham McCutchen's Deposit Account No. **50-2518**, referencing billing number **7011112001**. The Commissioner is authorized to credit any overpayment or to charge any underpayment to Bingham McCutchen's Deposit Account No. **50-2518**, referencing billing number **7011112001**.

Respectfully submitted,
Bingham McCutchen LLP

Dated: September 16, 2005

By: 
Gerald Chan
Reg. No. 51,541

Bingham McCutchen LLP
Three Embarcadero Center, Suite 1800
San Francisco, California 94111
Telephone: (650) 849-4960
Facsimile: (650) 849-4800